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FOULSTON SIEFKIN ISSUE ALERT  
EMPLOYEE BENEFITS

# TEN THINGS EMPLOYERS SHOULD KNOW ABOUT THE UNIFORM SUMMARY OF BENEFITS AND COVERAGE (SBC)

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by Jason Lacey

Now that the Supreme Court has upheld the health care reform law, it's time to re-focus on the new mandates and requirements that will go into effect in the next few months. A big one is the new uniform summary of benefits and coverage or "SBC." The government issued comprehensive regulations on SBCs earlier this year, and there are lots of details in the rules. Here are ten key considerations to get you started.

**1. What is an SBC?** The SBC is a new disclosure requirement for insurers and group health plans, mandated by the health care reform legislation. It is a 4-page summary of a plan's coverage, set out in a standard format. The idea is that individuals should be able to quickly compare different coverage options by looking at the SBC for each option.

**2. When do these new rules apply?** For employees enrolling during open enrollment, the rules apply to the first open-enrollment period that begins on or after September 23, 2012. For other enrollees (e.g., new hires and special enrollees), the obligation to provide an SBC does not apply until the first plan year beginning on or after September 23, 2012. For example, in a calendar-year plan, a new hire enrolling as of October 1, 2012 does not need to be provided with an SBC in connection with the initial enrollment, but if the same plan holds open enrollment for 2013 in November 2012, an SBC must generally must be provided in connection with that open-enrollment period.

**3. Who is required to provide the SBC and who is entitled to receive it?** In an insured plan, both the insurer and the plan administrator are obligated to provide the SBC, although compliance by either of them will be treated as compliance by both. In a self-funded plan, the plan administrator must provide the SBC (or contract with someone else to provide it). The SBC for a benefit package generally must be provided to each participant and beneficiary (e.g., eligible spouse or dependent) who is eligible for that benefit package, although a single SBC may be provided for all participants and beneficiaries who reside at the same address.

**4. When must the SBC be provided?** If a participant is required to enroll for coverage or has the opportunity to make coverage or enrollment changes, the SBC must be provided at the time written (including electronic) enrollment materials are distributed. If there are no written enrollment materials, the SBC must be provided by the first date on which the participant is eligible to enroll. If coverage is automatic, the SBC generally must be provided at least 30 days before the beginning of the plan year. In the case of a special enrollee, the SBC must be provided within 90 days after enrollment. An SBC must be provided as soon as possible (no later than 7 business days) after it is affirmatively requested.

**5. What must be included?** There is a standard format for the SBC that must be used. There are 12 categories of required content, including things like cost sharing,

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limitations and exclusions, continuation coverage, provider networks, formularies, examples, and a link to a uniform glossary of common terms. Premium information is not required to be included.

**6. What if there are changes in plan coverage?** If there is any material modification in plan coverage during the plan year and that modification affects the information disclosed in the SBC, a notice of modification generally must be provided at least 60 days in advance of the effective date of the change. Material modifications include both reductions in coverage and enhancements to coverage.

**7. How must the SBC be provided?** Like most disclosure rules, the regulations contemplate that the SBC will be provided in hard copy, but there are some exceptions. An SBC may be provided electronically in connection with online enrollment or renewal of coverage. In addition, for individuals already covered under a plan, the SBC may be provided electronically under the same standards that apply to electronic distribution of other plan materials, such as the SPD, and for individuals who are not already covered under a plan, the SBC may be provided electronically if the format is “readily accessible.” In all cases, individuals must have the right to receive a paper copy of the SBC upon request, free of charge.

**8. Can the SBC be included with an SPD or other plan disclosures?** As a general rule, the SBC must be provided as a stand-alone document. It is permissible to include the SBC with an SPD, but only if (1) the SBC is placed at the beginning of the SPD, and (2) the SPD is distributed at least as frequently (and in the same manner) as the SBC is required to be distributed.

**9. Are there samples available to show how the SBC should look?** A template for the SBC, along with detailed instructions and a sample completed SBC, is available on the DOL website at [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform), under the heading “Summary of Benefits and Coverage and Uniform Glossary.” In general, the template format must be used.

**10. Is there a penalty for failing to comply?** The law imposes a specific penalty of up to \$1,000 for each willful failure to provide an SBC to an individual. The SBC rules also are part of the broader group of health care reform mandates that are subject to a \$100 per day, per failure penalty under the tax code. The IRS and DOL are expected to provide further guidance on how these two penalties will be coordinated, but the IRS has said it will enforce the \$100 per day penalty until further notice.

Even though open enrollment may be several months away, employers should begin familiarizing themselves with these rules now. Important questions to answer soon include:

- Which benefit options are subject to these rules (don’t forget FSAs and HRAs)?
- Who will be responsible for preparing the SBC (employer, insurer, or TPA)?
- How will the SBC be distributed and who will do it?

## FOR FURTHER INFORMATION

If you have questions or want more information regarding these rules or other ERISA/employee benefits issues, Foulston Siefkin LLP would welcome the opportunity to work with you. For assistance or information, contact Douglas L. Hanisch 316.291.9748 or [dhanisch@foulston.com](mailto:dhanisch@foulston.com) or Jason P. Lacey 316.291.9756 or [jlacey@foulston.com](mailto:jlacey@foulston.com) or your regular firm contact. You can also visit our website at [www.foulston.com](http://www.foulston.com).

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